

“Step on a Crack, Break Your Mother’s Back”: Poor Moms, Myths of Authority, and Drug-Related Evictions from Public Housing

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A.

Once upon a time, the old superstition “Step on a crack, break your mother’s back”¹ turned many of my walks down city streets into a game. What else could cracks have referred to but the lines and crevices in the pavement? Of course, it did not much matter, since little depended on it. I knew that my mama’s well-being did not rise or fall with my physical agility. It would have been crazy to think otherwise. Yet, when I remembered and the spirit moved me, I did try to avoid the cracks on the assumption that it couldn’t hurt to show a little extra concern and respect for mom now and then. There were, of course, children who deliberately and defiantly walked on cracks as a way of defying fate.

Back in the early 1990’s, during the height of the crack epidemic, I asked my ever-practical mother where she thought the superstition came from and she replied, laughing at her memories, that it probably referred to wooden floor boards that fly up unexpectedly when stepped on because they are not nailed down. In rickety dwellings a misstep might lead to serious injury. Viewed in this context, the superstition may have been an instructional ditty useful for teaching children how to move about the house. The significance of stepping lightly is indicated by the linkage between the failure to do so and harm to one’s mother. Thus, the same bit of folklore when applied to different material conditions generated different interpretations and different behavior. Yet, adherence to the dictates of the old superstition gave both my mother and me an opportunity to show a bit of dutiful regard for our mothers’ well-being. For both of us, the superstition was part of the bundle of “common beliefs, values,

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1. The existence of this ditty among black folk sayings is documented in NEWBELL NILES PUCKETT, *FOLK BELIEFS OF THE SOUTHERN NEGRO* 433 (1926).

traditions, and practices" that constituted and reflected the authority or social power of mothers in black culture.²

Today, the old superstition may have taken on a new meaning for children who contemplate possessing, using, or dealing drugs close to home when home is a public housing development or a publicly subsidized unit in a private development. As a component of the so-called "War on Drugs," mothers are being evicted from public housing because of the drug-related activities of their children whom they are expected to control, even if they are unaware of what their children are up to. To avoid eviction, mothers are turning their children out because the mothers have no alternative. In some cases, even ostracism is not sufficient to persuade public housing authorities to allow a mother to maintain a home for her remaining offspring. Ergo: "Step on a 'crack,' break your mother's back!" The same goes for heroin, cocaine, and marijuana. The figurative has become literal. Superstition has given way to taboo, as a bit of folklore has moved from the sacred to the profane.

In the discussion that follows I will consider the government's policy of no-fault evictions from public and publicly-supported housing as it relates to the authority of poor black and brown mothers with regard to their children. The punitive, hyper-rational, government-dictated prohibition on drug-related activity by their children does not possess the organic power of the superstition "Step on a crack, break your mother's back." The law would be more effective if it aspired to capitalize on or increase the authority of poor minority women insofar as their children are concerned. To do that, the law would have to be more respectful of the women's attempts to deploy cultural and social mechanisms of control. Moreover, the law would have to provide the women with the material resources with which to pursue their vision of responsible motherhood in reality.

B.

To stem the tide of crime and to restore security and civility to life in public housing, Congress passed legislation requiring that every housing authority provide in its leases that any drug-related criminal activity, on or off its premises, engaged in by a tenant, any member of her or his household, a guest, or any other person under the tenant's control, shall be cause for eviction.³ In *HUD v. Rucker*, the Supreme Court, by a vote of eight to zero,

2. THE SOCIAL SCIENCE ENCYCLOPEDIA 42 (Adam Kuper & Jessica Kuper eds., 2d ed. 1996). See also T. R. YOUNG & BRUCE A. ARRIGO, THE DICTIONARY OF CRITICAL SOCIAL SCIENCES 19 (1999) (defining traditional authority as social power, vested in offices or persons of higher status, which requires that those of inferior rank comply with the former's "orders, commands, wishes, or expectations").

3. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 5101, 102 Stat. 4181, 4300 (amending 42 U.S.C. § 1437d(l)); Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 504,

held that this provision "unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity."⁴

Viewed most positively, the "one-strike," "zero tolerance," "no-fault" eviction policy is premised on the notion that public housing residents, no less than private housing residents, deserve a safe and secure place to live. Given the impact drugs can have on life in a public housing community in terms of heightened violence and destruction of the physical environment, it is considered justifiable to condition continued occupancy on the residents' noninvolvement with drugs. Responsibility is placed on the family unit to control and oversee its members and to expel anyone whose continued involvement with drugs jeopardizes the neighbors' entitlement to shelter.⁵ HUD rejected the creation of fault-based defenses to eviction like lack of knowledge or the absence of real control on the ground that they "would thereby undercut the tenant's motivation to prevent criminal activity by household members."⁶ Moreover, if public housing authorities had the burden of proving knowledge and control, evictions would be "time-consuming, costly, and otherwise cumbersome."⁷ Residents who may have information regarding the criminal behavior of their fellow tenants, for example, may be reluctant to complain to the police or housing authorities or to testify at hearings because of their fear of reprisals. The policy thus gives the other tenants maximum protection.

However legitimate its premises, the eviction campaign *as implemented* might be aptly styled "'The War on Drugs' takes on 'Moynihan's Matriarchs'."⁸ Chief among those adversely impacted by the campaign have been poor single minority female heads of household, often senior citizens, who are living with their actual or adopted offspring, one or more of whom, usually an adolescent or young adult male child or grandchild, sells or possesses drugs. The mothers and grandmothers (though sometimes it is a

104 Stat. 4079, 4185 (amending 42 U.S.C. § 1437d(1)(5))(1990); Housing Opportunity Program Extension Act, Pub. L. No. 104-120, 110 Stat. 834 (1996) (amending 42 U.S.C. § 1437d(1)(5)). For a full account of the legislative, administrative, and judicial history of the tenant responsibility clause, see So Cheung Lee, *Serving the Invisible and the Many: U.S. Supreme Court Upholds the Rucker One-Strike Policy*, 11 J. AFFORDABLE HOUS. & CMTY. DEV. L. 415 (Summer 2002).

4. HUD v. Rucker, 122 S.Ct. 1230, 1233 (2002). Justice Breyer recused himself because his brother was the trial judge in the case.

5. Lisa Weil, *Drug-Related Evictions in Public Housing*, 9 YALE L. & POL'Y REV. 161, 171 (1991).

6. Public Housing Lease and Grievance Procedures, 56 Fed. Reg. 51560, 51567 (Oct. 11, 1991).

7. Rucker v. Davis, 203 F.3d 627, 633 (9th Cir. 2000), *rev'd en banc*, 237 F.3d 1113 (9th Cir. 2001), *rev'd*, 122 S.Ct. 1230 (2002).

8. In the 1960s, then-social theorist Daniel Patrick Moynihan authored an influential report in which he attacked the "matriarchal structure" of black families as being pathologically destructive of black males. See OFFICE OF PLANNING AND POLICY RESEARCH, U.S. DEP'T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965).

sister, aunt, cousin, wife, or girlfriend) are in general innocent, often even ignorant, of any criminal activity, but are nonetheless held responsible for the conduct of the other occupants of their units.

The person being controlled here, of course, is not the child, but the parent. The parent becomes the guarantor of the good behavior of her family members and guests. The policy depends on her economic rationality as head of the household and provides incentives for her to kick the offending family member out of the unit. HUD regulations provide that a housing authority *may* allow a family to remain in public housing if the offending family member is excluded.⁹ The state will furthermore support the tenant's effort to exclude the offender. "If a tenant cannot control criminal activity by a household member, the tenant can request that the [public housing authority] remove the person from the lease as an authorized unit occupant, and may seek to bar access by that person to the unit."¹⁰

Housing Authority of Norwalk v. Lee,¹¹ a pre-*Rucker* case, illustrates how the incentive structure is supposed to work. Barbara Lee did not get evicted as a result of drug dealing by her twenty-year-old son Marcel because she went to great lengths to expel him from her household. After her son's second arrest for drug dealing, Barbara Lee told him that he would have to reside elsewhere because she had learned that public housing tenants who consent to the presence of persons who engage in drug dealing on housing authority property face eviction.¹² He moved out but did not stay away from the development where Ms. Lee lived.

His mother . . . repeatedly stressed to him that he could not return to Colonial Village, even when she saw him with other youths and men congregating in Colonial Village. She was concerned that her younger children have a "roof over their heads" as he had had when he was their ages. She also testified to pushing him out the door bodily when he would return and get "nasty" about not returning home.¹³

9. Public Housing Lease and Grievance Procedures, *supra* note 6, at 51578 (24 C.F.R. § 966.4(1)(5)). Prior to *Rucker*, tenants in New York City had successfully defended against eviction by proving that at the time of the proceedings the offending family member had been excluded from the household. See *McQueen v. New York City Hous. Auth.*, 570 N.Y.S.2d 532 (App. Div. 1991) (holding that termination was not supported given evidence that incarcerated son did not reside in unit and would not return upon release); *Corchado v. Popolizio*, 567 N.Y.S.2d 460 (App. Div. 1991) (ordering de novo hearing on possibly meritorious defense of nonresidence); *Brown v. Popolizio*, 569 N.Y.S.2d 615, 622 (App. Div. 1991) (finding that tenant's unwillingness to bar nonresident child not the equivalent of intent to violate court order and therefore not a basis for an authorized termination). See also *Turner v. Chicago Hous. Auth.*, 760 F. Supp. 1299 (N.D. Ill. 1991) (holding that lease term as interpreted by court provided no basis for termination based on nonresident child's activities off leased premises but on housing authority property).

10. Public Housing Lease and Grievance Procedures, *supra* note 6, at 51567.

11. *Hous. Auth. of Norwalk v. Lee*, No. SPNO 9008-10252, 1991 WL 204488 (Conn. Super. Ct. Sept. 3, 1991).

12. *Id.* at *2.

13. *Id.*

After Marcel tried to break into the apartment through a window when he thought no one was home, a bar was placed across it.¹⁴ When he got into an altercation with Ms. Lee’s fiancé, a restraining order was obtained against him.¹⁵ Barbara Lee even tried to get Marcel’s name removed from the lease, but was unable to do so because Marcel went to live with relatives and Ms. Lee therefore could not obtain a letter from a landlord attesting to the fact that Marcel resided elsewhere.¹⁶ Marcel Lee was eventually arrested for selling drugs on the street where Barbara Lee lived and the Housing Authority instituted summary eviction proceedings against her.¹⁷ Based on all the evidence, the court found that the Authority did not prove that Barbara Lee “consented to the presence of her son at the premises after she knew that he was selling illegal drugs.”¹⁸

Barbara Lee was vigilant to the point of barring her recalcitrant child from the maternal fold. His efforts to force his way back into the family home availed him nothing; his mother barred his access and called upon the law to restrain his reentry. Marcel Lee became an outcast, a pariah, a person so dangerous to live with that even his own mother had to avoid him. Marcel Lee achieved this status because he broke what is essentially a taboo, one that elevates drug dealing to the level of a primal sin, the repetition of which imposes a curse on one’s mother and family. Of course, the taboo is the product of the state’s insistence and it is backed up by the state’s power. In addition, it is a taboo for which there is no rite of purification or desacralization by which a drug-dealing offender can be restored to good standing in her or his family or community (though for the drug-using offender there is the possibility of rehabilitation via drug treatment).¹⁹

Barbara Lee was not evicted, though under the *Rucker* decision she could have been because the eviction policy does not depend upon proof of fault. It is disturbing to think that after going to such lengths, a mother like Barbara Lee might still be evicted from her home.

C.

In the view of many public housing advocates and tenants, the eviction policy upheld in *Rucker* is “ruthless, racist, [and] gravely unfair”; furthermore it targets the poor for a punishment (i.e., eviction) that rarely befalls more

14. *Id.*

15. *Id.*

16. Hous. Auth. Of Norwalk v. Lee, 1991 WL 204488 at *3.

17. *Id.* at *1.

18. *Id.* at *3.

19. HUD regulations state that “[a] PHA may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition for being allowed to reside in a unit.” 56 Fed. Reg. 51578 (24 C.F.R. § 966.4(l)(5)).

affluent persons with drug-involved family members and acquaintances.²⁰ Although numerous objections have been raised against the eviction policy,²¹ the most vociferous complaints are lodged against its no-fault aspects.²²

Barbara Lee's son was an adult and his arrests for drug dealing alerted her to conduct that could have gotten the entire family evicted. Not all parents or grandparents are aware of or well informed of the criminal behavior of their family members. The tenant responsibility clause allows public housing authorities to evict tenants who do not know about the drug-related criminal behavior of their co-tenants, family members, and guests.

Ignorant and innocent mothers and grandmothers are among the most sympathetic potential evictees of the government's zero tolerance policy; it is on their behalf that the strongest claims of unfairness are mounted. Three of the four *HUD v. Rucker* plaintiffs fit this profile, for example. Two were grandmothers (aged 71 and 63) and longtime public housing residents (of 25 and 30 years, respectively) whose grandsons were caught smoking marijuana in the parking lot of their complex. Mrs. Rucker herself was 63 years old and had lived in public housing for 13 years. Her mentally disabled daughter, who resided with her, was found in possession of cocaine and drug paraphernalia three blocks from the family's home. All three women maintained that they were ignorant of their children's drug-related activities.²³ Indeed, after the

20. Emma D. Sapong, *Public Housing Tenants Evicted on 'One-Strike' Rule Cry Foul*, BUFFALO NEWS, Apr. 8, 2002, at A1.

21. Some housing authorities rely on addresses given by arrestees and recorded in arrest records, news reports, and even anonymous assertions to identify candidates for eviction and the information may be inaccurate. See *Gallatin Housing Authority v. Gifford*, 1989 Tenn. App. Lexis 572 (1989) (involving eviction proceeding initiated on the basis of a newspaper article; arrestee, father of tenant's children, merely frequent guest, not lodger or boarder). In eviction and forfeiture actions, it is irrelevant that the arrest did not lead to a conviction. See *United States v. Leasehold Interest in 121 Nostrand Ave.*, 760 F. Supp. 1015, 1030-31 (E.D.N.Y. 1991) (holding that federal civil forfeiture does not require criminal conviction or proceeding); *Boston Hous. Auth. v. Guirola*, 575 N.E.2d 1100 (Mass. 1991) (finding eviction before or following dismissal of criminal case not breach of double jeopardy clause). See also Matthew L. Bennett, Note, *Time for a New Battle Plan: HUD and the Drug War in Public Housing*, 7 J.L. & POL. 847, 866-67 (1991) (pointing out that forfeitures are not limited to major drug offenses). Moreover, evidence suppressed in the criminal proceeding may nonetheless be admissible in the eviction action. Cf. *Boston Hous. Auth. v. Guirola*, 575 N.E.2d at 1104-05 (not reaching question of admissibility of illegally obtained evidence in eviction action because entry of the unit by management was authorized). The policy makes no allowance for the age of the perpetrator or the drug involved.

Some tenants maintain that evictions are being used to compensate for the ineffectiveness of the criminal justice system and to show that the housing authorities are "tough" on drug dealers by targeting the most vulnerable people in the community. Moreover, to the extent that law enforcement efforts are racially-biased, that bias is reflected in the eviction campaign. On the racially discriminatory impact of the War on Drugs in general, see CLARENCE LUSANE, *PIPE DREAM BLUES: RACISM & THE WAR ON DRUGS* (1991).

22. See Nelson H. Mock, Note, *Punishing the Innocent: No-Fault Eviction of Public Housing Tenants for the Actions of Third Parties*, 76 TEX. L. REV. 1495 (1998) (arguing that no-fault evictions are inconsistent with the public policy justifications that generally support strict liability in torts and criminal law).

23. See *HUD v. Rucker*, 1998 WL 345402 at *2 (N.D. Cal. 1998).

Supreme Court ruled in the defendants' favor, the eviction orders against the women were canceled and all three were allowed to stay in their homes.²⁴

In another similar case, a mother, age 81 and suffering from hypertension and gout, and a father, age 85 and suffering from emphysema, received an eviction notice after their 51-year-old son was arrested for selling marijuana on a corner near the development where his parents had lived roughly since the time of his birth. The police also found two bags of drugs in his room. The son was jailed on an unrelated charge and it was furthermore understood that he would not be returning to his parents' home upon his release. The couple tried to locate comparable housing for \$475.00 a month.²⁵ After complaints and a public demonstration, the board of the housing authority voted unanimously to reverse the order of eviction because it was convinced that the elderly tenants knew nothing about their son's drug-related behavior.²⁶

The seeming unfairness of such truly no-fault eviction actions likely prompted the Supreme Court in *HUD v. Rucker* to emphasize that evictions are discretionary, not mandatory. The law

entrusts [the decision to evict] to local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from "rampant drug-related or violent crime," 42 U.S.C. § 11901(2) (1994 ed. and Supp. V), "the seriousness of the offending action," 66 Fed.Reg., at 28803, and "the extent to which the householder has . . . taken all reasonable steps to prevent or mitigate the offending action."²⁷

Subsequent to the decision, the Secretary of Housing and Urban Development urged public housing directors to employ evictions as the last resort and to apply the policy "responsibly, not rigidly."²⁸ An assistant secretary backed up this message in a subsequent letter in which he reminded directors to consider "the seriousness of the violation, the effect that eviction of the entire household would have on household members not involved in the criminal

24. *Evictions Canceled for Three, Upheld for Man, 75*, SAN DIEGO UNION-TRIB., Apr. 6, 2002, at A6. The fourth *Rucker* plaintiff, Herman Walker, was 75 years old at the time the eviction case was decided by the district court, disabled, and incapable of living without an in-home caregiver. He lived in a public housing development for seniors. *HUD v. Rucker*, 1998 WL 345403, at *2. His caregiver was a crack user. Drugs and drug paraphernalia were found in his apartment three times and three times he was issued a lease violation notice. After the third time, the eviction process was started. It was at this point that Walker fired his caregiver. *HUD v. Rucker*, 203 F.3d at 634. The news article indicates that this move apparently came too late to save him from eviction.

25. David Dishneau, *Elderly Pair Feel Wronged by Drug Eviction Notice*, AP NEWSWIRE, May 14, 2002.

26. *Frederick Housing Authority Reverses Drug Eviction of Elderly Couple*, AP NEWSWIRE, May 30, 2002.

27. *Rucker*, 122 S.Ct. at 1235.

28. Bob Kerr, *A Son's Bad Decisions Hit Home*, PROVIDENCE (R.I.) J., Aug. 25, 2002, at B1.

activity, and the willingness of the head of household to remove the wrongdoing household member as a condition of continued occupancy."²⁹

Because it does not explicitly make foresight or knowledge a prerequisite to eviction of a tenant for the actions of another householder or guest and leaves such matters to the discretion of public housing authorities, the law appears unjust on its face and should be amended. In its present form, it has the potential to make innocent tenants fearful and anxious; for infirm and elderly residents, the mere threat of eviction can be life-threatening. The effort to amend the no-fault eviction policy so as to make it more fair to truly ignorant and trusting mothers and grandmothers should not be the only reforms contemplated, however.

To a certain extent, unsuspecting and unwary tenants like the plaintiffs in *Rucker* are sympathetic because they are the romanticized victims of their devious and conniving relations, and insensitive bureaucrats.³⁰ The decision in the federal forfeiture action brought against Clara Smith illustrates this amply.³¹ The subject of the forfeiture action was Smith's leasehold interest in a small three-bedroom, one-bath apartment in the Marcy public housing development in the Williamsburg section of Brooklyn.³² The real parties in interest (people with a stake in the outcome) were the eighteen residents of the unit: Clara Smith, two of her daughters, thirteen of her grandchildren, and two of her great-grandchildren.³³

29. Letter from Michael M. Liu, Assistant Secretary for Public and Indian Housing, Dep't of Hous. and Urb. Dev., to Public Housing Directors (June 2, 2002).

30. *Lloyd Realty Corp. v. Albino*, 552 N.Y.S.2d 1008 (N.Y. Civ. Ct 1990), takes a similar approach to the plight of an elderly tenant. The defendant was Rosario Albino, a sixty-eight-year-old widow and fifteen-year tenant, who had lived in the subject unit with two of her adult daughters and one of their friends. *Id.* at 1009. After one of her daughters and the friend were arrested in the apartment following an early morning "buy and bust" operation, Mrs. Albino asked all three to leave. *Id.* at 1009-10. According to Mrs. Albino, they returned about six months later to retrieve their belongings. (The court was willing to attribute any confusion about the date of their return to Mrs. Albino's age and ill health.) While there, the police conducted a raid that netted a quantity of cocaine and heroin. Once again, one of the daughters and the friend were arrested. The court concluded that the landlord did not establish that Mrs. Albino knew of or acquiesced in the illegal drug activity that occurred in her apartment. Her ignorance of her daughters' affairs was pardonable. Both instances of police activity occurred around 7:00 a.m. while Mrs. Albino was asleep, *id.* at 1010, and each time the illegal drugs were located in the kitchen near the friend and outside of Mrs. Albino's presence. *Id.* at 1011. In the opinion of the court, Mrs. Albino's "only fault [was] in raising two daughters who went astray and got involved in narcotics." *Id.* Her ouster from her home would not serve the purposes of the narcotics eviction program and might impair her ability to survive. The court acknowledged that Mrs. Albino was now on notice and might be evicted if there were any more drug dealing on the subject premises. It expressed the hope "that the threat of an eviction will cause her two daughters to find some compassion and decency to stay away from the premise." *Id.* at 1012.

31. *United States v. 121 Nostrand Ave., Apt. 1-C, Brooklyn, N.Y.*, 760 F. Supp. 1015 (E.D.N.Y. 1991).

32. *Id.* at 1020.

33. *Id.* at 1024-1025. The court provides a family tree of the occupants of the defendant apartment, complete with real names, ages, and pictures. *Id.* at 1022. Clara Smith, age fifty-one, had been the leaseholder of record for thirty-two years. One of her daughters, Juanita Smith, age thirty-six, (whom the court described as being "a reformed heroin addict") resided in the apartment with four of her children, one of whom, Ramel, age eleven, was in the legal custody of Clara Smith because he had been

The forfeiture action was initiated after Mrs. Smith's nineteen-year-old granddaughter sold two vials of crack to an undercover police officer who knocked on the door of the apartment.³⁴ A subsequent search of the apartment produced crack paraphernalia and thirty-five vials of crack in a yellow purse. This evidence suggested that the apartment was used to store drugs and possibly to package them for sale.³⁵ The Smith home had been targeted by the authorities because of anonymous complaints that drug sales were occurring there. Mrs. Smith attributed the charges to the non-custodial paternal grandparents of two of her daughter Juanita's children, who also lived in the development. The Social Security benefits to which the children were entitled may have figured significantly in generating a battle over their custody. This possibility prompted the following comment from the court: "In straightened and desperate circumstances disputes over any source of income may result in what would seem to the outsider, a demeaning feud. Compassion and graciousness are not attributes easily afforded where living conditions are barely above those necessary for survival."³⁶

Despite the tangible evidence and the granddaughter's guilty plea,³⁷ Mrs. Smith was able to avoid forfeiture by proving that she had no knowledge of the drug activity.³⁸ The court portrayed Mrs. Smith as a woman "almost overwhelmed by the problems of her household."³⁹ The burden of cooking, cleaning, and managing a large family kept her virtually homebound. She usually left the apartment to do the food shopping for the entire family when the food stamps arrived. The family's quarters were very cramped and she had ordered her daughter Juanita's family out of the apartment. When they wound up in intolerable shelter conditions, she compassionately allowed them to

born drug addicted. Another of Juanita's children, Chenelle, age nineteen, had two children of her own, ages four and twenty-two months. Clara Smith's daughter Sylvia, age thirty-two, also lived in the apartment together with her six children, ages twelve through four. Clara Smith had legal custody of three of her daughter Pearl's children, ages thirteen, nine, and twenty-three months; although they lived in the unit, their mother Pearl did not.

34. *Id.* at 1023.

35. *Id.* at 1024.

36. *United States v. 121 Nostrand Ave.*, 760 F. Supp. at 1024.

37. Following the search, Mrs. Smith, her two resident daughters, and Chenelle were arrested and indicted on drug charges. *Id.* at 1024. The charges against Mrs. Smith were dismissed. Her two daughters were convicted of possession of cocaine and placed on probation. Her granddaughter pled guilty to selling drugs in the apartment building and was sentenced to five years probation. Chenelle's offense, unlike that of her mother and aunt, was punishable by more than one year's imprisonment and therefore satisfied one of the requisites of the forfeiture law. The court concluded that Chenelle's admission and plea, as well as "[t]he large number of crack vials and other drug paraphernalia in the apartment . . . creat[ed] probable cause to believe that the apartment was used to store and safekeep crack and possibly to package it. . . . This circumstance alone is sufficient to establish the probable cause necessary to warrant forfeiture." *Id.* at 1031.

38. *See* 21 U.S.C. § 881 (a). The court equated lack of knowledge with an absence of "willful blindness." This standard required that the property holder "take 'basic investigatory steps' and not deliberately avoid knowledge of wrongdoing occurring on the property." *United States v. 121 Nostrand Ave.*, 769 F. Supp. at 1033.

39. *Id.* at 1024.

return.⁴⁰ Otherwise occupied, Mrs. Smith might not have been aware of any illegal activity. The apartment was not a "crack house" where widespread, notorious drug activity occurred."⁴¹

Mrs. Smith . . . firmly opposed drug activities by her extended family. She did not tolerate such activities in the apartment since the well-being of the other family members would be jeopardized. . . .

When informed by the Housing Authority of anonymous charges of drug sales from her apartment, she confronted the members of her household and satisfied herself that the allegations were not true. As a precaution, she prohibited members of the household from having guests while she was away. She also insisted that only members of the family answer the door.⁴²

Said the court, "In view of her expressed antipathy to drugs, it would be reasonable to assume that her children and grandchildren would try to keep Mrs. Smith in the dark about their proscribed activities. We take judicial notice of the widespread lack of knowledge of childrens' [sic] drug activities in all kinds of families."⁴³ The court was aware that a ruling in the government's favor would likely result in the homelessness of the tenants, and deprive the minor children of "whatever stability" there was in their lives.⁴⁴ It concluded that Mrs. Smith and the several generations of children "who look to her for shelter as the family's matriarch, may not be dispossessed because one of them has sold drugs from their apartment."⁴⁵

Grandmothers like Mrs. Smith may be the bedrock of the traditional black community, but they are cooptable too. Consider the contemporary valorization of the grandmothers who are taking care of the children of their crack-addicted offspring.⁴⁶ The grandmothers have little choice but to accept the responsibility and perhaps little alternative but to accept their portrayal as heroines of the War on Drugs. In the process, of course, they anchor and solidify the scapegoating of their children.

40. *Id.* at 1025.

41. *Id.* at 1033.

42. *Id.* at 1025.

43. *Id.* at 1033.

44. *United States v. 121 Nostrand Ave.*, 769 F. Supp. At 1018.

45. *Id.*

46. See, e.g., Beverly Beyette, *A Second Motherhood*, L.A. TIMES, June 24, 1990, at E1; Betty Booker, *Labor of Love: For Many Reasons, More Grandparents Are Raising Their Children's Children*, RICHMOND TIMES-DISPATCH, March 6, 1995, at E1; Jane Gross, *Grandmothers Bear a Burden Sired by Drugs*, N.Y. TIMES, April 9, 1989, at A1; Dana Kennedy, *Grandmothers Step in to Rear Children as Mothers Succumb to Crack*, L.A. TIMES, Dec. 30, 1990, at A35; Douglas Martin, *Now the Work That's Never Done Is Grandmother's*, N.Y. TIMES, May 12, 1991, §4, at 6; Michele Norris, *Grandmothers Who Fill Void Carved by Drugs; Many Rearing Offspring of Addicted Children*, WASH. POST, Aug. 30, 1991, at A1; Tony Pugh, *Black Grandmas Often the Glue Holding Families; Raising Children Takes Toll*, NEW ORLEANS TIMES PICAYUNE, June 2, 1996, at A14; Christopher Quinn, *A Break in the Epidemic: As Use of Crack Cocaine Drops, Social Workers, Judges, Doctors and Grandmothers of Crack Babies Continue to Try to Help Its Young Victims*, CLEVELAND PLAIN DEALER, Jan. 13, 1998, at 1A.

While the victimization and suffering endured by women like Mrs. Smith more than supports their entitlement to authority among blacks, the compassion that it generates among others has limited political potency. Society's especial admiration of the courage of blacks who endure economic hardship with fortitude and virtue is but a manifestation of the conceit that minority people are the objects, and not the subjects, of the world racism has wrought, even insofar as its undoing is concerned. Too much nostalgia about the supposedly moralistic high road taken by some members of a community can be a curse for the rest who are grappling with oppression. It gets in the way of a rational assessment of the material truth and the effort to alter the material terrain. "Minority people do more than despair; they both resist oppression and refuse to let their struggles consume their entire lives."⁴⁷ They grapple with the dangers and disasters drugs cause in ways the dominant forces may not understand or respect.

Barbara Lee, Clara Smith, and Pearlie Rucker do not exhaust the prototypes of poor minority mothers struggling with children caught in the trap of the drug trade. There are other tenants, other mothers, who are aware of their children's drug-related activities, yet they use the resources available to them in the attempt to save their loved ones from ruin. Under the "zero-tolerance," "one-strike and you're out," no-fault eviction policy, they are being made to live according to a state-imposed rationality that threatens their maternal hopes and dreams, as well as the sources of their maternal authority. At the same time, they are the victims of the contemporary tendency to address the causes and consequences of crime and violence purely in terms of sentiment, illusions, and ideology. This tendency justifies unusually harsh and punitive responses. These tenants would benefit from the inclusion in the law of a fault requirement that takes into account their best efforts to mitigate the harm to their neighbors while trying to salvage their children's lives.

D.

Like middle-class mothers whose children become involved with drugs, poor women who live in public or publicly-supported housing seek to use the property to which they have access for the benefit of their children. Take the case of Mary Harris.⁴⁸ Mary Harris was almost evicted from public housing because she "allowed" her daughter, Mary Harris, Jr., first to sell drugs across the street from the apartment and then to return to the unit when she was released on parole.

47. Regina Austin, *Educating White People*, Speech at the Plenary Session of the Annual Convention of the American Association of Law Schools (Jan. 6, 1990) (on file with author).

48. *Hous. Auth. of Norwalk v. Harris*, No. SPNO 9009-10295, 1991 WL 270285 (Conn. Super. Ct. Nov. 14, 1991), *rev'd*, 611 A.2d 934 (Conn. App. Ct. 1992), *aff'd*, 625 A.2d 816 (Conn. 1993).

The description of Mary, Jr.'s occupancy of the apartment reflects the unsettled and disorganized lifestyle of a young woman caught up in crack drug culture. According to Mrs. Harris and two of her other daughters, Mary, Jr. moved out of the apartment after her mother refused to allow Mary, Jr.'s boyfriend, Edward, to stay overnight. "Although there was ample evidence that Mary, Jr. moved from place to place, there seem to have been no times when she was not in contact with various members of her family nor when she did not return to Roodner Court as her home base."⁴⁹ Mary, Jr. remained listed as a tenant of the apartment, though her mother testified that she attempted to have Mary, Jr.'s name removed from the lease. During this period, Mary, Jr. was also arrested for possession of narcotics. Mrs. Harris learned of this arrest from one of her daughters who picked up the information on the grapevine. When questioned by her mother, Mary, Jr. denied that she used drugs.

Mary Harris, Jr. was arrested for selling drugs at a public housing address across the street from her mother's apartment.⁵⁰ Mary, Jr. pled guilty and was given a three-year sentence. When she was paroled in June of that same year and placed on Supervised Home Release, Mary Harris agreed to act as her sponsor.⁵¹ Mary, Jr. refused to comply with the terms of her parole, however, and was reincarcerated. She was again released on parole the following June and again failed to obey her parole officer's instructions.⁵² When he went to visit the apartment, Mary Harris told him that "Mary, Jr. was 'in and out' and did not always stay at Roodner Court." Mary, Jr. was subsequently returned to prison.

The Housing Authority instituted eviction proceedings based on Mary, Jr.'s arrest and conviction.⁵³ According to the Authority's reading of the statutes that were relevant at the time, using the premises for the sale of illegal drugs or allowing persons on the premises with consent to sell illegal drugs constituted a serious nuisance. If the housing authority established the existence of a serious nuisance, the tenant could exonerate herself or himself by proving that she or he had no knowledge of the third party's alleged conduct.

The trial court concluded that Mary Harris did not satisfy this burden. The court concluded that she "did not actively seek out facts that would have given her a realistic picture of her daughter's activities. She contented herself with her daughter's denial of drug use."⁵⁴ Furthermore, she allowed Mary, Jr. to return to the apartment after her first parole. Her claim that she did not know that sponsorship meant that she was providing her daughter with a home was dismissed by the court as the product of a deliberate failure to learn the

49. *Id.* at *2.

50. *Id.* at *1.

51. *Id.* at *2.

52. *Id.* at *3.

53. Hous. Auth. of Norwalk v. Harris, 1991 WL 270285 at *1.

54. *Id.* at *3.

conditions of Mary, Jr.'s parole. Although Mrs. Harris denied that Mary, Jr. lived in the unit, Mrs. Harris allowed the authorities to believe that it was an appropriate place to contact her daughter. The court said that Mrs. Harris "herself testified that, if Mary, Jr. would live up to her standards, she could return to live with her. 'What mother would tell her child she was not welcome?' she asked."⁵⁵ The court responded as follows:

There is no doubt that Mrs. Harris sought to steer her daughter from DRUGS. None of her other children were involved with DRUGS and she was a good tenant of the Housing Authority. However, by not following through on removing Mary, Jr. from the lease and by permitting her to return to Roodner Court at will, so long as Edward did not stay overnight, she "failed to require" Mary, Jr. "to conduct herself in a manner that (would) not constitute a serious NUISANCE." It was the availability of the Roodner Court apartment that drew Mary, Jr. to Roodner Court again and again.⁵⁶

The case was reversed on appeal based on a finding that the law did not make the failure to control the conduct of others a serious nuisance and therefore Mrs. Harris was not guilty of conduct that would justify summary eviction.⁵⁷ The law at issue in *Rucker*, of course, fails to provide such a loophole.

Other mothers have defied the exclusionary thrust of the federal eviction campaign and tried to keep their families intact. A *New York Times* article described a mother who lived in the Henry Jackson Houses in the Bronx and "fought" for her 21-year-old son:

After he was arrested for possessing several vials of crack, she was ordered to vacate the apartment unless she agrees to exclude him.

She yearns to try to keep him off the streets that she fears will swallow him whole. "They're not giving him a chance to straighten out his life," she said. "They're pushing him right back into trouble, right?"⁵⁸

Similarly, Rosa Valcarcel's landlord sued to evict her after two of her children were arrested for selling drugs in and in front of the building and she allowed

55. *Id.*

56. *Id.* The facts of Harris are similar to those of a family profiled in a recent news article. See Ben Winograd, *Teen's Pipe May Cost Family Its Apartment*, SAN JOSE MERCURY NEWS, June 10, 2002, at 1. A young mother faced eviction because her 17-year-old son was caught outside of the family's subsidized unit with a drug pipe. Although the son no longer resided in the unit and his mother had taken his key, he was able to enter the unit because his mother left it open for two of her younger children to enter while she was at work or picking up the baby of the family. The mother was fully aware of the son's criminal behavior. He son had spent time at a juvenile facility and violated his parole by testing positive for marijuana. The mother had sent him off to live with his grandmother and had called the police when he did not attend court-ordered drug programs. Unfortunately, she had not taken his name off the lease. At the time the article was written, her son was serving a 90-day house arrest sentence in her home and using his time to search for a new home for the family.

57. Hous. Auth. of Norwalk, 625 A.2d 816 (Conn. 1993), *aff'g* 611 A.2d 934 (Conn. App. Ct. 1992) (concluding that the tenant's conduct did not constitute a serious nuisance which would allow the authority to dispense with the notice requirement).

58. Douglas Martin, *Innocent People Lose Homes: Law's Strange Twist*, N.Y. TIMES, March 11, 1992, at B3.

the younger of the two, a seventeen-year-old son, to return to her apartment after his incarceration.⁵⁹ Ms. Valcarcel was described as a senior citizen who resided with seven of her grandchildren.⁶⁰ In explaining her behavior, she testified, "I couldn't just let him go into the street just like that."⁶¹ The trial court concluded that she was an objectionable tenant because she condoned her children's illegal activity on the rental premises and harbored them after becoming aware of their criminality.⁶² This decision was reversed on appeal, primarily because the children who had engaged in criminal behavior did not reside in the apartment at the time of trial.⁶³

The federal eviction campaign is an assault on the beliefs of women like Mary Harris and Rosa Valcarcel regarding the responsibilities of mothers to their children. The campaign aims to control the behavior of the stereotypical welfare mother who is full of excuses for her progeny and always ready to overlook their shortcomings where drugs are concerned, out of an abundance of misguided maternalism. Consider how the trial court gently chided Mrs. Harris for requiring that Mary, Jr. conform to strict, traditional sexual mores as a condition to staying in her home, while failing to impose such prerequisites regarding drugs. To compensate for the women's indulgences and forbearance, the state has created a taboo that is meant to be more powerful than any the women themselves would create. In conditioning the entitlement to public housing upon the expulsion of the drug offender, the state as white patriarch is forcing the infusion of masculine values into the governance of poor minority female-headed families. Just as in slave times when commercial transactions separated mothers from their children, here too "'kinship' loses meaning since it is subject to termination in the name of property relations."⁶⁴

The threat of the eviction of one's mother from her home may be enough to dissuade some residents from selling or doing drugs on housing authority property. The regard black children, especially boys, have for their mothers and grandmothers is legendary. Black mothers, for their part, are said to go to great lengths to keep their families together and to shield their offspring from the harsh effect of white domination.⁶⁵ Cultural norms suggest that mothers are supposed to have sufficient social or moral authority with which to deter criminal behavior by their children. Some no doubt do; unfortunately, many do not.

59. *Marwyte Realty Assoc. Ltd. v. Valcarcel*, 559 N.Y.S.2d 80 (N.Y. Civ. Ct. 1990), *rev'd*, 579 N.Y.S.2d 311 (N.Y. App. Div. 1991).

60. *Marwyte*, 579 N.Y.S.2d.

61. *Marwyte*, 559 N.Y.S. at 81.

62. *Id.* at 84.

63. *Marwyte*, 579 N.Y.S.2d at 312.

64. Hortense J. Spillers, *Mama's Baby, Papa's Maybe: An American Grammar Book*, DIACRITICS, Summer 1987, at 65, 74.

65. See Mildred A. Hull-Lubin, *The Grandmother in African and African-American Literature: A Survivor of the African Extended Family*, in NGAMBIKA: STUDIES OF WOMEN IN AFRICAN LITERATURE (Carol Boyce Davies ed., 1986).

Authority notwithstanding, most parents employ more than social or moral force to control their children's behavior. Middle-class parents have the money to back up their moral guidance with material bribes of consumer goods and allowances, expenditures for direct oversight, opportunities for education and personal enrichment, and medical insurance for drug rehabilitation and psychological counseling. Not so poor families. Unfortunately, the authority of poor mothers may not be sufficiently underwritten with material capital to achieve compliance with their requests regarding drug-related behavior. Thus, in constrained material circumstances, the bundle of values and mores by which poor minority women live out the mother/child relationship may have more aspirational than operational importance.

The dominant culture has assigned matriarchal significance to the cultural norms and behavior of poor black mothers especially,⁶⁶ even though these women cannot really be matriarchs because they lack the political, social, and economic power that true matriarchs possess.⁶⁷ Beyond focusing on getting their children into drug rehabilitation and encouraging them to live drug-free lives, it is not clear what mothers are supposed to do for grown or near-grown children caught in the drug culture. Denying their children money for necessities (which they may otherwise procure through more dangerous means), reporting them to the authorities (particularly police, parole or probation officers), turning them away from home as they struggle to stay clean, or manifesting other forms of "tough love" do not come easily to everyone.⁶⁸ One public housing resident and mother of four, when asked to comment on the *Rucker* ruling, "imagined that it would be hard to throw your own child out of the house when they have nowhere else to go."⁶⁹ When poor black mothers act on such emotions like other mothers, they are deemed to be acting like matriarchs and criticized or mocked for it.

E.

The interests of the mothers and their children are not the only ones at stake with regard to drug-related evictions from public housing. The concerns of other tenants must be weighed in the balance. Their sentiments regarding drugs, crime, and violence bear closer analysis. It is important to understand how they believe that the tension between individual irresponsibility and

66. Spillers, *supra* note 64, at 80.

67. BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 71-75 (1981).

68. See Shelia M. Straus & Gregory P. Falkin, *Social Support Systems of Women Offenders Who Use Drugs: A Focus on the Mother-Daughter Relationship*, 27 *AM. J. DRUG ALCOHOL ABUSE* 65 (2001).

69. See Amy Wold, *Some EBR Housing Tenants Applaud Ruling on Drug-related Evictions*, *BATON ROUGE ADVOCATE*, Apr. 2, 2002, at 1B.

structural oppression should be resolved in the assignment of blame for drug-related crime.⁷⁰

There are enormous numbers of poor minority people trapped in desperate economic circumstances who do not resort to criminal behavior and violence. They reject the notion that they are merely pawns of the system, incapable of making choices and rising above their dire straits. Personal responsibility is a life and death proposition for them. They get no comfort from reminders that the victim should not be blamed because they are victims too.

The everyday ethics and jurisprudence of black and brown urban life give rise to shared understandings of the line between conduct that is properly attributable to the lack of moral fiber of the perpetrator and conduct that is attributable to "the system" or "the white man." The line is drawn as a practical matter in the course of daily existence. The alternatives to crime and violence preferred by neighbors who share communal space with lawbreakers tend to be options they themselves pursue. The options are experienced, not merely hypothesized. They are the strategies that families employ to protect their own children from harm or to keep them from getting into trouble.

Many public housing residents are disturbed by the federal eviction campaign because it has caused the ouster of residents who are really innocent.⁷¹ To them, the federal government's eviction campaign would be fairer if it did not extend to tenants who make reasonable efforts to control the criminal activity of other householders.⁷² In the view of some tenants, housing authorities are not doing enough to combat drug dealing directly. Evictions are being used to compensate for the ineffectiveness of the criminal justice system

70. One commentator has proposed that tenant committees be given the authority to formulate eviction policies for drug and crime-related activity. See Adam P. Hellegers, *Reforming HUD's "One Strike" Public Housing Evictions Through Tenant Participation*, 90 J. CRIM. L. & CRIMINOLOGY 323, 352-58 (1999).

71. In commenting on HUD's proposed lease and grievance procedure regulations, legal aid and tenant organizations contended that "the tenant should not be required to assure the non-criminal conduct of the household members, or should have only a limited responsibility to prevent criminal behavior by members of the household." 56 Fed. Reg. at 51566. Instead of a strict liability or guarantor standard, the commenters maintained that "the tenant should not be held responsible if the criminal activity is beyond the tenant's control, if the tenant did not participate, give consent or approve the criminal activity, or if the tenant has done everything 'reasonable' to control the criminal activity." *Id.* One law review author has proposed that evictions should be allowed only if the tenant is aware of the drug-related activity and neither attempts to prevent thereafter or fails to cooperate in efforts to exclude the offender. Weil, *supra* note 5, at 182. See also Mock, *supra* note 22, at 1529-1530 (arguing that tenants facing evictions for third-party behavior should have a defense when they have done all they could do to reasonably prevent criminal behavior).

On the other hand, tenants living in public housing in Greenwich, Connecticut objected to the Housing Authority's settlement policy of reinstating evicted residents upon proof of good behavior. The tenants proposed that residents with two convictions for possession be barred from returning to public housing. Diana A. Johnson, *Drugs and Public Housing: A Connecticut Case Study*, 24 CLEARINGHOUSE REV. 448, 451 n.1 (1990).

72. HUD regulations already provide that in the context of evictions for criminal activity, public housing authorities have discretion to consider "all the circumstances including the seriousness of the offense, the extent of the participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity." 56 Fed. Reg. at 51567.

and to show that the housing authorities are "tough" on drug dealers by targeting the most vulnerable people in the community.

The no-fault eviction policy underestimates the importance of community-generated, nonmaterial, social sources of control like mothers' authority. A true taboo against dealing drugs, a real metamorphosis of "Step on a crack, break your mother's back," would be much more effective if it had a genuine social or organic basis, *i.e.*, if it originated in and resonated throughout the everyday lives of children, and was backed up, not by punitive measures imposed by the state, but by the social control mechanisms generated by the families from which they come and the communities in which they reside. To restore mothers' authority, power must be restored to the figurative: the ability to speak of complex matters on more than one level at a time. The collective imagination must be empowered in such a way that poor minority women control the primary, secondary, and even tertiary meanings of their ways of life. That will only happen when they can view themselves as being at the center of their own universes, capable of manipulating their environments *and* that of elites, too. It goes without saying that the power of poor minority women to name their own reality is inconsistent with elites touting the benefits of individual responsibility and telling them what their problems are, especially given the elites' tendency to label such women their own worst enemies. Since elites do not object to being criticized as long as the criticism confirms their omnipotence, they must be "de-centered," moved out of the spotlight, and denied their ultimate control over the women's affairs. The women must be able to teach their offspring that oppression compounds itself by causing the oppressed to turn inward on themselves and each other. Poor black and Latino mothers should enable their children to recognize their own complicity in the societal indifference to the conditions that provoke a resort to crime and violence—and then empower them to conquer that indifference. Of course, this cannot be done without material resources that can be deployed locally and that are subject to local control.